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Situation of human rights in Myanmar**

Note by the Secretary-General

Summary

The Secretary-General has the honour to present the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar, Yanghee Lee, in accordance with General Assembly resolution 70/233. The report provides an overview of human rights developments in Myanmar and sets out key issues to be addressed in order to achieve further progress in human rights in the country.

* A/71/150.

** The present report was not submitted on schedule because of the date of the country mission to Myanmar (20 June-1 July 2016).

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Report of the Special Rapporteur on the situation of human rights in Myanmar

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 31/24 and General Assembly resolution 70/233, covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Council in March 2016 (A/HRC/31/71). The report reviews progress in implementation of the Special Rapporteur's previous recommendations, including the priority areas identified for the Government's first 100 days in office and the year ahead.

2. The Special Rapporteur conducted her fourth official visit to Myanmar from 20 June to 1 July 2016. Her aim was to make a comprehensive, objective and balanced assessment of the human rights situation since the formation of a new Government in March 2016. The Special Rapporteur expresses her thanks to the Government for its continued cooperation with her mandate. During the 12-day visit, the Special Rapporteur travelled to Kachin, Rakhine and Shan States, as well as Yangon and Nay Pyi Taw. She addressed a range of human rights issues with Union Parliament and State ministers and other stakeholders, including parliamentarians, political, religious and community leaders, civil society representatives, victims of human rights violations and members of the international community,[1] during which she appreciated the candid exchange of views and the frank assessment of remaining human rights challenges.

II. Forging human rights in a young democracy

3. The Special Rapporteur welcomed the holding of general elections in Myanmar in November 2015 as "a new chapter in the country's history".[2] In the elections for the Upper House of the Union Parliament, the National League for Democracy won 135 seats, the Union and Solidarity and Development Party won 11 seats and other parties won 22 seats. In the Lower House, the National League for Democracy won 255 seats, the Union and Solidarity and Development Party won 30 seats and other parties won 38 seats. Elections were postponed in around 600 village tracts (more than in the 2010 elections) because of security concerns.

4. Despite the largely peaceful atmosphere of the elections and the transition period thereafter, the Special Rapporteur noted that pre-election concerns, namely the disenfranchisement of hundreds of thousands of people, including members of minorities, and the disqualification of many Muslim candidates, as well as restrictions in the exercise of the rights to freedom of expression, peaceful assembly and association, were symptomatic of broader human rights challenges requiring urgent attention.

5. The composition of the new Government was announced on 22 March 2016, with Htin Kyaw inaugurated as President on 30 March 2016. His inaugural address

[1] See the annex to the Special Rapporteur's end-of-mission statement for the list of her meetings (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20224&LangID=E).

[2] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16758&LangID=E.

outlined national reconciliation, the achievement of internal peace, the creation of a constitution for a democratic federal union, and the improvement of living standards as priorities for the new Government.

6. Aung San Suu Kyi, the only female Cabinet member, was initially given four ministerial portfolios: Foreign Affairs, Office of the President, Education, and Energy and Power. The latter two portfolios were subsequently reassigned. Aung San Suu Kyi was also designated as "State Counsellor", authorized to contact ministries, departments, organizations, associations and individuals in an official capacity. Three ministries, Home Affairs, Defence, and Border Affairs, remain under military control.

7. When the representatives of the various Union Parliament ministries took office on 30 March 2016, they announced 100-day plans, although an overarching comprehensive plan for the Government is still lacking. The Special Rapporteur appreciates the fact that these plans are broadly aligned, in many respects, with the priority areas set out in her previous report (A/HRC/31/71). However, she notes that many plans were not well publicized and most of them were developed with little public consultation. Looking ahead to the development of a longer-term five-year Government plan, she believes that greater involvement of relevant stakeholders, including civil society, is important, particularly in priority-setting and in designing and implementing related programmes.

8. The Special Rapporteur notes that the consolidation of democracy and the creation of a culture of respect for human rights is a complex undertaking requiring political will. Sustained investment in enhancing the functioning, integrity and accountability of State institutions is vital. Human rights principles must underpin this process to ensure more transparent, inclusive, participatory and accountable governance.

9. The Special Rapporteur was encouraged to see a burgeoning understanding of this role and a broad commitment to further reform among her Government interlocutors. She observed, nonetheless, the tensions between a new civilian leadership and a bureaucracy inherited from previous military regimes, often resulting in a duality of policy and approach. She also observed the challenges of trying to enhance democratic governance within an institutional framework that impedes the development of democratic practices and respect for human rights. The resolution of these challenges will require a continuing prioritization of further reforms and further changes in behaviour and mindset.

10. Parliament has a central role in promoting democracy and human rights. In Myanmar's second Parliament since the country came under military rule, the National League for Democracy holds a majority of seats, although military representatives continue to hold a bloc of 25 per cent of the seats. The new Speakers and Deputy Speakers of Parliament, whose appointment was announced on 28 January 2016, represent the National League for Democracy, the Union and Solidarity and Development Party and the Arakan National Party. Although more women were elected than in the 2010 elections, they make up just 13 per cent of parliamentarians. The current Parliament also includes over 100 former political prisoners and human rights defenders.

11. In its first session, which ran from February to June 2016, members of Parliament discussed a range of human rights questions, including land

confiscations, the teaching of ethnic minority languages in schools, continuing armed conflict in parts of the country and the situation in Rakhine State. Committees were formed, including committees on the rights of women and children and on educational development. Parliament also began to review laws that limit fundamental freedoms and contravene international human rights standards. The second session of Parliament was convened on 25 July.

12. The Special Rapporteur saw a clear need to enhance the capacity and functioning of this young institution and its new members, and she welcomed the understanding among the parliamentarians she met of their important check-and-balance function vis-à-vis the executive branch. She also welcomed the frank assessment of challenges, such as the 25 per cent bloc of parliamentary seats allocated to military representatives, and the lack of a separate professional secretariat (with support currently provided by the General Administrative Department under the Ministry of Home Affairs). To ensure a properly functioning parliamentary culture, the independence of Parliament must be safeguarded and parliamentarians should be able to exercise the right to freedom of speech when discharging their duties.

13. The Special Rapporteur continues closely to follow developments regarding the National Human Rights Commission, in view of its important mandate. The Commission has continued its promotional and awareness-raising activities, including a workshop on minority rights organized in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in June 2016. The Commission also continued its prison visits and recently addressed issues related to labour rights, forced eviction of squatters, the alleged murder of two individuals by a military officer in Mon State and the alleged rape and murder of two Kachin teachers by members of the Tatmadaw (Myanmar armed forces) in northern Shan State.

14. The National Human Rights Commission was accredited with "B" status by the International Coordinating Committee of National Human Rights Institutions in January 2016. The Subcommittee on Accreditation raised concerns about the Commission's selection and appointment process, financial independence and lack of female representation.[3] In addition, the Subcommittee urged the Commission to "interpret its mandate in a broad, liberal and purposive manner, and promote and protect the human rights of all, including the rights of Rohingya and other minority groups".[3]

15. The Special Rapporteur encourages the full implementation of these recommendations in order to increase compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). She urges the Commission to act as an independent and objective human rights advocate and not to shy away from issues deemed sensitive to the Government.

[3] See http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf, section 2.3.

A. Ensuring greater respect for the rule of law

16. The Special Rapporteur welcomes the priority placed by the Government on upholding the rule of law as the foundation for any functioning democracy and on strengthening legal and judicial institutions. Central to this process is the continuing reform of legislation, previously identified by successive Special Rapporteurs, which contravenes international human rights standards and limits the full enjoyment of human rights.[4]

17. In this regard, the Special Rapporteur remains concerned about the four laws relating to issues of race and religion adopted in 2015, and again calls for their repeal. She and other special-procedure mandate holders have repeatedly highlighted the discriminatory impact of those laws, particularly on minorities and women, and their lack of compliance with Myanmar's human rights obligations. It is also crucial to bring the Citizenship Law of 1982 into line with international standards, particularly by revising discriminatory provisions that provide for the granting of citizenship on the basis of ethnicity or race.

18. Since delicate relationships are still being forged between key constituencies, the Special Rapporteur is aware that discussions on constitutional reform are politically sensitive. Nevertheless, she believes that further democratic transition and operation of the rule of law in Myanmar will require an amendment of the Constitution of 2008. Continued deliberation of this important issue is needed, particularly within Parliament and by the public.

19. The Special Rapporteur welcomes the progress made on the recommendations of the parliamentary Legal Affairs and Special Cases Assessment Commission to amend 142 laws. In particular, she notes the repeal, in May 2016, of the State Protection Act. She also notes significant improvements to the Peaceful Assembly and Peaceful Procession Law of 2011, including the removal of the requirement for prior permission before organizing a public demonstration. In the current context, only notification of the intent to protest 48 hours in advance is required. Several shortcomings remain, however; notably the retention of criminal penalties, including imprisonment, for failure to provide advance notification. Additionally, spontaneous assemblies are not recognized and not exempted from the prior notification requirement.[5] Furthermore, the law retains unduly burdensome provisions, requiring that information about the speakers, the agenda and slogans to be used during a demonstration be provided in advance.[6] It is to be hoped that those shortcomings can be remedied before the law is formally amended. Similarly, the Special Rapporteur hopes that amendments to the Ward or Village Tract Administration Law of 2012, currently before Parliament, will remove the requirement to register overnight guests and abolish criminal penalties for breaches, as originally proposed.

20. The Special Rapporteur notes that the draft Child Law and the draft Prevention of Violence against Women Law remain pending before the Office of the Attorney General. She welcomes the broad engagement with civil society in their development, but notes that the drafts may be further revised. She therefore renews her call for the retention of specific provisions which would increase Myanmar's

[4] See A/HRC/31/71, annex.
[5] A/HRC/20/27, paras. 28 and 29.
[6] A/69/398, para. 27.

compliance with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These include provisions on recruitment of children into the armed forces and on the minimum age of criminal responsibility in the draft Child Law. The draft Prevention of Violence against Women Law should contain a comprehensive definition of rape and provisions against rape and other forms of sexual violence committed by the military, police and uniformed personnel in times of conflict. The Law should also address all forms of gender-based violence, including domestic violence and marital rape, and provide for adequate criminal penalties, including penalties against the military.[7]

21. With a new Government and Parliament backed by a strong mandate, it is the right time for Myanmar to transform its legislation and develop a comprehensive legislative reform programme which will ensure compliance with international human rights standards and provide human rights protection.

22. As highlighted previously, the current legislative process will remain opaque without systematic public consultation on draft laws. Improvements are required, including the establishment of clear timelines for the review of bills and consultation procedures to ensure transparency and adequate engagement by civil society and the public. A vetting mechanism should also be established to ensure that all draft legislation complies with international human rights standards.

B. Strengthening judicial institutions

23. An independent and well-functioning judiciary is essential to the operation of the rule of law. Currently, judicial institutions remain constrained by resource and capacity challenges and face continuing concerns regarding rampant corruption[8] and lack of independence and impartiality. The separation of powers (article 11 of the Constitution of 2008) and judicial independence (article 19) are guaranteed by the 2008 Constitution but are undermined by the control and influence of the executive over the judiciary, particularly in politically sensitive cases.[9]

24. Political and military influence also impedes the ability of lawyers to practise effectively.[9] Lawyers, particularly those involved in politically sensitive cases, continue to face threats and reprisals, including intimidation and legal sanctions. In September 2015, Khin Khin Kyaw, a defence lawyer representing the student protestors in Letpadan township, was charged by the presiding judge under section 228 of the Penal Code (intentionally insulting or interrupting the public servant in judicial proceedings). The Special Rapporteur therefore recommends continuing reform of the Bar Council to ensure that complaints against lawyers are handled by an independent and impartial tribunal with regard to due process and procedural

[7] CEDAW/C/MMR/CO/4-5, para. 27.

[8] See International Bar Association's Human Rights Institute, *The Rule of Law in Myanmar: Challenges and Prospects* (London, 2012) (http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c68828b3-9c10-48a7-a1c7-f5d394b63cc9#) and International Commission of Jurists, *Right to Counsel: The Independence of Lawyers in Myanmar* (Geneva, 2013) (http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf).

[9] International Commission of Jurists, "Re: Implementable Action Plans from the ICJ to the new Parliament & Government", 3 May 2016 (http://www.icj.org/wp-content/uploads/2016/06/Myanmar-Recommendation-to-NLD-Gvt-Advocacy-Analysis-Brief-2016-ENG.pdf).

fairness.[10] Additionally, contempt-of-court laws should be reformed to ensure that lawyers cannot be punished for their association with politically sensitive cases.

25. The Special Rapporteur encourages further steps to strengthen the judiciary, such as measures to reform judicial appointments in line with article 10 of the Basic Principles on the Independence of the Judiciary; creating a judicial appointments committee; creating a specialized, independent body to investigate allegations of judicial corruption; and improving continuing education and training for the judiciary.

C. Release, rehabilitation and reintegration of political prisoners

26. In April 2016, the State Counsellor pledged to work for the release of political prisoners, political activists and students facing trial for cases connected with politics.[11] On 8 April, in the Government's first days in office, around 113 political prisoners were released, including 69 students arrested in connection with the Letpadan protests against the National Education Law in March 2015. The Special Rapporteur publicly welcomed this release.[12] A further 83 political prisoners were released on 17 April, including prominent human rights defenders and land-rights and community activists whose cases had previously been raised by the Special Rapporteur. Those released were pardoned or the charges against them were dropped.

27. In Presidential Order 33/2016 (16 April), it was stated that the releases were intended to bring about national reconciliation.[13] President Htin Kyaw also publicly stated that sustained efforts would be made in the future to prevent those who act legally for political causes or for their own conscience from being imprisoned.[14]

28. The continuing detention of political prisoners clearly shows that the democratic transition is not complete. The Special Rapporteur therefore reiterates the need to release all political prisoners as a priority. In view of the discrepancies in the numbers of remaining political prisoners, a comprehensive review of all cases is needed, based on broad and public consultations with all relevant stakeholders. A formal definition of the term "political prisoner" must also be developed in consultation with all relevant stakeholders, including representatives of civil society, former political prisoners, representatives of the Ministry of Home Affairs, other relevant ministries and the National Human Rights Commission and parliamentarians.

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[10] Basic Principles on the Role of Lawyers, article 28 (www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx).

[11] Myanmar, President's Office, "State Counsellor Daw Aung San Suu Kyi to strive for the granting of presidential pardon to political prisoners, activists, students", 11 April 2016 (http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/04/11/id-6238).

[12] Office of the United Nations High Commissioner for Human Rights, "Release of political prisoners in Myanmar hailed by UN expert", 12 April 2016 (http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19811&LangID=E).

[13] "Presidential pardon given to 83 prisoners on Myanmar New Year Day of ME 1378", *The Global New Light of Myanmar*, 17 April 2016 (http://www.burmalibrary.org/docs22/17-4-2016.pdf).

[14] Myanmar, President's Office, "New year message sent by President U Htin Kyaw to the people on the Myanmar New Year Day", 17 April 2016 (http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/04/17/id-6254).

29. The Special Rapporteur reiterates that former political prisoners should not be subject to restrictions that impede their reintegration into society. The majority of the political prisoners released received a presidential commutation of their sentences under section 401 of the Criminal Procedure Code, which gives the President broad powers to return individuals to prison if a condition of their release is not satisfied. Many released political prisoners are also classified as ex-criminals and face restrictions when trying to acquire passports and professional work licences or enrol in formal university education. Moreover, the support and compensation available are inadequate. Released political prisoners, particularly those who suffered ill-treatment or prolonged periods of solitary confinement, should be given the necessary medical and psychosocial support.

D. Enhancing the democratic space

30. As the Special Rapporteur has repeatedly stated, the enjoyment of the rights to freedom of expression, association and assembly are essential to democracy in Myanmar. While many people are hopeful that continuing restrictions on these rights will soon be fully lifted, recent incidents are worrying signs that these trends persist.

31. A recent United Nations report highlighted the fact that outdated laws restricting freedom of expression continue to be selectively used to silence the media and civil society,[15] in particular in cases relating to issues deemed politically sensitive or too close to the interests of powerful constituencies, such as the military. As illustrative examples, the Special Rapporteur notes the recent banning of a film deemed a threat to ethnic unity and the denial of permission for a press conference on a civil society report alleging grave violations by the military. She also notes the lawsuit brought by the military against a news outlet for covering a statement by former parliamentary speaker and retired General Shwe Mann, urging graduates of the Defence Services Academy to work with the new Government. The lawsuit was dropped following a public apology by the news outlet.

32. The Special Rapporteur welcomes the recent release of individuals convicted under various defamation provisions, including Chaw Sandi Tun, Patrick Khum Jaa Lee, Zaw Myo Nyunt and Maung Saungkha, but notes that arrests and prosecutions of journalists and others continue. In February 2016, Hla Phone (Kyat Pha Gyi) was charged under section 66 (d) of the Telecommunications Act and section 505 (b) of the Penal Code for sharing posts deemed critical of the military and the former President. In July, media personnel from the *Ladies Journal* were sentenced to six months' imprisonment or a fine of 20,000 kyats for a report in September 2013 alleging that a retired military officer was involved in land confiscations.

33. Threats and attacks against journalists continue, often with little accountability for the perpetrators. In March 2016, for example, there was an explosion at the home of the Chief Editor of the Root Investigative Agency (based in Rakhine State). The attack followed months of threats on social media. The perpetrators remain at

[15] See United Nations Educational, Scientific and Cultural Organization and International Media Support, *Assessment of Media Development in Myanmar* (Bangkok and Copenhagen, 2016) (https://www.mediasupport.org/wp-content/uploads/2016/06/Myanmar-MDI-report-June-2016.pdf).

large. Also in March, the police investigation into the alleged murder of reporter Ko Par Gyi in October 2014 was closed even though the case remains unresolved.

34. The Special Rapporteur reiterates that freedom of expression and independent journalism are essential elements of a democratic society, and encourages continued efforts to promote greater media freedom and media plurality. Priority must be given to the reform of relevant media laws and other legislation that influence freedom of expression more broadly,[16] and she hopes for quick progress in that area. She also recommends the prompt promulgation of a bill on the right to information, in line with international standards. As provided by the new Media Law, she hopes to see greater use of the Myanmar Press Council to resolve disputes with the media as an alternative to legal action. Additionally, she welcomes the development of an ethics code for journalists by the Myanmar Press Council. Other steps should be taken to develop a culture of ethical and responsible journalism, which is increasingly important as Myanmar's media environment continues to expand and evolve.

35. The Special Rapporteur has previously raised concerns regarding the arrest and prosecution of individuals exercising their fundamental rights, creating a new generation of political prisoners. While there has not been the same frequency and scale of arrests, problematic legal provisions continue to be applied against civil society actors and land and labour rights activists. The practice of bringing multiple charges across different townships for the same offence, or of bringing charges for offences allegedly committed in the past, also continues.

36. In February 2016, three interfaith activists, Pwint Phyu Latt, Zaw Zaw Latt and Zaw Win Bo, were convicted under the Immigration (Emergency Provisions) Act 1947 and sentenced to two years' imprisonment with hard labour. Zaw Win Bo was pardoned in April 2016, but Zaw Zaw Latt and Pwint Phyu Latt were convicted and sentenced to another two-year prison term under section 17 (1) of the Unlawful Association Act 1908 for being members of an interfaith peace delegation which visited Kachin State in 2013. The prosecutions followed an online campaign against the activists by the Buddhist Organization for the Protection of Race and Religion (MaBaTha).

37. In April 2016, Gambira (Nyi Nyi Lwin) was also convicted under the Immigration (Emergency Provisions) Act and sentenced to six months' imprisonment for allegedly entering Myanmar illegally. He was also subject to new charges relating to a past incident from 2012. Those charges were ultimately dropped, and he was released in July 2016 during the Special Rapporteur's visit.

38. In May 2016, 71 factory workers from Sagaing Division were arrested during a march protesting working conditions. Fifteen people were later charged under various sections of the Penal Code, with the charges including disturbing public order and unlawful assembly. In July, the 15 protestors boycotted their trials and were subsequently found to be in contempt of court and subjected to one month's imprisonment or a fine of 5,000 kyats. Their trials are currently pending.

39. The Special Rapporteur has also received reports of continued monitoring and surveillance of civil society actors and human rights defenders. During her visit, interlocutors were photographed and questioned by security personnel. During a

[16] See A/HRC/31/71, annex.

private meeting with a village community in Rakhine State, she discovered a recording device placed by a Government official. She was also concerned to hear that several civil society actors were currently facing visa restrictions on their entry to Myanmar or had, once again, been placed on the "blacklist".

40. The Special Rapporteur thus welcomes the priority given by the Ministry of Foreign Affairs (as outlined in its 100-day plan) to removing citizens living abroad from the blacklist and clearing their criminal records. While 600 individuals were removed from the list in July, thousands remain blacklisted. She also renews her request to all the civil society actors, media workers and prisoners she met with to report any cases of reprisals. The Government (in particular the Ministry of Home Affairs and Special Branch Police) must ensure that her interlocutors will not face any form of reprisal, including threats, harassment, punishment or judicial proceedings, as required by the Human Rights Council in its resolutions 24/24 and 12/2 and in the terms of reference for country visits by the special-procedures mandate holders. The Deputy Minister of Home Affairs gave assurances that these practices would cease in future visits and that no reprisals will occur.

41. As the Secretary-General has said: "civil society is the oxygen of democracy". A change of mindset is clearly needed at all levels of Government allowing civil society and the media to flourish. In future, the fundamental role of civil society in furthering democratic reforms and advocating for human rights must be fully recognized. Civil society can also monitor corruption and abuse of power, holding State institutions to account, but only in a safe and enabling environment. Its voice should not be excluded or restricted, but empowered and supported. The Government should forge real and meaningful partnerships with civil society.

III. Towards national reconciliation

A. The impact of conflict and looking towards peace

42. Violent conflict continues to have a detrimental effect on individuals across the country. Sporadic clashes continue in Kachin State, including in and around the jade mining areas of Hpakant. In northern Shan State, violence is become increasingly complicated, with many armed actors taking an active part. A new front in the fighting has broken out in Rakhine State between the Arakan Army and the national armed forces, the Tatmadaw.

43. Conflict-related human rights violations continue to be reported, including attacks against civilians, extrajudicial killings, torture, inhumane and degrading treatment, forced labour, looting and property confiscation and destruction. During her visit, the Special Rapporteur met an individual whose sibling had been kidnapped and who had received no news of his fate at the time of their meeting, many weeks later. Such abductions, for forced recruitment or as hostages, are increasing. Incidents of sexual and gender-based violence continue to be of serious concern, with 20 cases reported per month.[17] Violations are reportedly committed by all sides, including by militias, some of which are supported by the Tatmadaw. Also of particular concern are increasing reports of violations committed by the Ta'ang National Liberation Army and the Restoration Council of Shan State, and

[17] See S/2016/361, para. 53 and A/HRC/31/71, paras. 48-50.

indications of increased fear and distrust among communities which, in the past, have lived in harmony.

44. The Special Rapporteur calls upon all parties to respect the applicable standards of international human rights and international humanitarian law. Clear policies prohibiting violations and awareness-raising activities about the standards should be in place. Furthermore, the Special Rapporteur underlines the need to combat impunity and to bring perpetrators to justice. In June 2016, seven civilians were killed in northern Shan State, and the Tatmadaw made a rare admission that soldiers were responsible for the deaths of five of the individuals. While welcoming the Tatmadaw's pledge to help the victims' families, the Special Rapporteur notes that the trial of the soldiers, as with many cases brought against military personnel,[18] will be conducted as a court martial. There is little information thus far on the way the process will proceed, and some families reportedly remain sceptical. Urgent steps should be taken to ensure independent and impartial investigations into all alleged violations, to ensure that victims or their families are given information about investigations and that the right to an effective remedy is observed. Cases with civilian victims should be systematically transferred to civilian courts. The vital work of civil society to retain and rebuild bridges between communities should also be supported.

45. The detention and prosecution of individuals under section 17 (1) of the Unlawful Associations Act continues, particularly in Kachin and Rakhine States, and in some cases with little supporting evidence. It is reported that some individuals have also been subjected to torture during interrogation. The Special Rapporteur emphasizes that such practices are unacceptable. Steps should be taken to prevent, investigate and prosecute all alleged acts of torture and inhumane and degrading treatment and to revise or abolish the Unlawful Associations Act.

46. The Special Rapporteur is also concerned by the continuing displacement of hundreds of thousands of individuals, including 3,600 people following recent fighting in Shan State and 1,900 in Rakhine State.[19] This is in addition to the 96,400 people who have been displaced for several years in northern Shan and Kachin States.[20] She heard from displaced persons of their daily struggles to survive, earn a basic living and access basic services, such as education and health care. She was extremely concerned by reports of decreasing humanitarian access, particularly access to the estimated 40,000 individuals in non-government-controlled areas of Kachin State. Limited and irregular humanitarian assistance was previously authorized, but access has recently been blocked. The Special Rapporteur also understands that, while previous requests for access would be sent through relevant ministries to the National Defence and Security Council, such requests are now handled by the Ministry of Home Affairs, with final clearance from the

[18] According to the Ministry of Defence, of 62 cases of murder/rape committed by military personnel against civilians from 2011-2015, 31 were tried by court martial.

[19] Office for the Coordination of Humanitarian Affairs, "Myanmar: New displacements in northern Shan State" (31 May 2016), 2 June 2016 (http://reliefweb.int/report/myanmar/myanmar-new-displacement-northern-shan-state-31-may-2016). Office of the United Nations High Commissioner for Refugees, "Myanmar: Rakhine CCCM Dashboard (1-Jun-2016) (http://reliefweb.int/report/myanmar/myanmar-rakhine-cccm-dashboard-1-jun-2016).

[20] Office for the Coordination of Humanitarian Affairs Humanitarian Country Team, "Myanmar humanitarian needs overview", 30 November 2015 (http://reliefweb.int/report/myanmar/myanmar-humanitarian-needs-overview-2016).

Commander-in-Chief. She was further informed about a proposal for people in non-government-controlled areas to travel to distribution points located in government-controlled or neutral areas; this would require a 1.5-day walk through dangerous areas for many people. The Special Rapporteur had hoped to assess the situation herself, but her application to visit Laiza in Kachin State was denied for security reasons. Despite initial positive signals, her visit to Kutkai in northern Shan State was also denied at the last minute on security grounds.

47. The Special Rapporteur reminds the Government of Myanmar of its obligation to guarantee the human rights of its population during armed conflict.[21] The United Nations and its partners should have regular, independent and predictable access to all those needing humanitarian assistance. All parties to the conflict should immediately grant humanitarian access to all populations in need, through cross-line operations, where required, and ensure that any permission required is granted through a transparent, efficient and prompt process.

48. Humanitarian assistance also remains a challenge in Rakhine State, where international organizations are required to apply for travel authorizations three weeks in advance through a burdensome procedure with no flexibility for possible changes. Additional authorizations are required for travel to northern Rakhine State. Muslim staff face restrictions on their freedom of movement and are required to seek additional authorizations, which hamper their official functions. Access to some camps for internally displaced persons, including the provision of medical services, is also restricted to a limited number of hours per week, significantly impeding the provision of vital assistance to all communities in need.

49. The conditions in the camps for internally displaced persons visited by the Special Rapporteur have not significantly improved since her previous visits, with a number of continuing problems, including overcrowding, the deterioration of temporary shelters and housing and the lack of proper sanitation facilities. She remains concerned about the dire housing conditions of the majority of internally displaced persons, including those in camps around Sittwe. Longhouses accommodating multiple families, initially designed to last only a few years, are now collapsing. She reiterates that durable solutions to displacement must be found in accordance with international standards. They should include voluntary return to places of origin and should not involve the permanent segregation of communities. The right to an adequate standard of living must be ensured for people displaced and returned.

50. Last year's elections were broadly seen as a sign of hope, but many people affected by conflict have expressed disappointment at the lack of change in their situation. The Special Rapporteur hopes that durable peace will be achieved in order for change to be realized. She therefore welcomes the priority given to the peace process by the Government and its efforts to reach out to all ethnic armed groups. She also welcomes the official formation of the National Reconciliation and Peace Centre, chaired by Aung San Suu Kyi, in July 2016. The Special Rapporteur was informed during her visit that preparations were under way for the "21st Century Panglong Conference", scheduled to be held in August 2016. She will be following developments closely. She notes that several preparatory summits have been held, including summits of ethnic armed groups and of young people from ethnic areas. It

[21] Human Rights Council resolution 9/9.

is vital that human rights issues are comprehensively addressed during the continuing dialogue, including commitments and mechanisms for accountability, equality and non-discrimination. Complex issues related to historically entrenched inequalities, as well as arrangements for sharing land and natural resources, must also be tackled.

51. The Special Rapporteur notes that a parallel civil society forum will be held alongside the Panglong Conference. She reiterates the importance of the participation of civil society organizations in the process as vital partners. They should have a voice in all areas of discussion, including issues which are seen by some as political, but have a significant impact on human rights.

52. Women must be full, equal and effective participants at all stages of the peace process, in line with Security Council resolutions 1325 (2000) and 1889 (2009). The Special Rapporteur welcomes information that, in two of the State-level joint monitoring committees, 50 per cent of the members are women. Women generally remain underrepresented, however. During her visit, she met women working in the area of human rights and conflict who could contribute greatly to the process, and she understands that civil society organizations intend to put forward female candidates. Given their important role, the peace process should include, at least, a 30 per cent representation of women at all levels in line with previous commitments. A gender perspective should be included, building on provisions on women's rights in the nationwide Ceasefire Agreement, so that discussions can address the gender-specific consequences of conflict, the needs and priorities of affected populations and their participation in post-conflict reconstruction.

53. The return of refugees and internally displaced persons will become a greater priority as the peace process continues. The Special Rapporteur thus welcomes the joint workshop on returns by the Ministry of Border Affairs and the Office of the United Nations High Commissioner for Refugees in July 2016. She emphasizes that all returns must be entirely voluntary and comply with international standards, including the Guiding Principles on Internal Displacement annexed to General Assembly resolution 46/182 and the Framework on Durable Solutions for Internally Displaced Persons of the Inter-Agency Standing Committee. Clear policies and systems are also needed to address the return of land or land allocation for displaced persons, which should be in line with the Principles on Housing and Property Restitution for Refugees and Displaced Persons.

54. The presence of landmines and other unexploded ordnance continues to impede returns. It is reported that 10 of Myanmar's States and regions are contaminated to some extent.[22] In the first three months of 2016 alone, 21 landmine casualties were documented in Shan State. While welcoming the completion of demining in a small area of Kayin State, the Special Rapporteur calls for mine action activities to be rapidly expanded to all affected areas. The assistance of the international community should be sought in this task. During her visit, she was informed that several parties to the conflict, including the Tatmadaw, continue to lay mines. She hopes that this practice will immediately cease given the effect of landmines on the safety, health and lives of local civilian populations. She also calls for the signature and ratification by Myanmar of the Convention on the Prohibition

[22] International Campaign to Ban Landmines and Cluster Munition Coalition, "Myanmar_Burma Mine Action", 3 November 2015 (http://www.the-monitor.org/en-gb/reports/2015/myanmar_burma/mine-action.aspx).

of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction without delay.

55. The Special Rapporteur welcomes the release of 146 underage recruits from the armed forces in 2015 and a further 46, thus far, in 2016. She also recognizes the steps taken to prevent recruitment of underage recruits, including training on age assessment in recruitment centres. However, eight parties remain listed in the Secretary-General's report on children and armed conflict.[23] Priority attention should be given to the report's recommendations, including the inclusion of relevant provisions in the new Child Law and prompt ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.[24] She also calls on ethnic armed groups to end underage recruitment and for the development of action plans against child recruitment and other violations.

B. Ensuring respect for the rights of minorities

56. Central to national reconciliation is respect for the rights of minorities in Myanmar. The Special Rapporteur has previously raised concerns about long-standing discrimination, including policies prohibiting the teaching of minority languages and restrictions on the freedom of religion or belief. Those concerns were also highlighted in an OHCHR report.[25] She thus reiterates that discrimination, which is the basis of long-standing grievances among ethnic communities, must be addressed in any future political dialogue.

57. Recent steps, such as the creation of a Ministry for Ethnic Affairs and the development of a formal policy on multilingual education are commendable. Yet it will also be vital to establish the necessary institutional, legal and policy framework to ensure greater respect for minority rights. That framework should be based on international human rights principles. In this regard, the Government should develop a comprehensive anti-discrimination law or policy to ensure that minorities can exercise their human rights without discrimination and in full equality before the law. The Government should also fully implement, translate and disseminate the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

58. The establishment of the Central Committee on the Implementation of Peace, Stability and Development of Rakhine State signals the priority given to addressing the complex challenges facing communities there. Rakhine State, now the poorest state in Myanmar, faces long-standing social and economic underdevelopment, including malnutrition, low incomes, poverty and weak infrastructure, compounded by natural hazards.[26] Some 120,000 persons remain displaced following the outbreak of communal violence in 2012.

59. The Special Rapporteur notes the recent announcement of a 142-point plan by the Central Committee and looks forward to further engagement in this regard. While there is an appropriate emphasis on equitable development, health care and humanitarian assistance to all communities, human rights must be at the heart of the

[23] A/70/836-S/2016/360.
[24] Ibid., paras. 109-110.
[25] A/HRC/32/18.
[26] Center for Diversity and National Harmony, *Rakhine State Needs Assessment*, September 2015.

response if sustainable peace and reconciliation are to be achieved. This will entail measures to ensure consultation and full participation of affected communities in the design and implementation of responses and planning processes, and measures to end the current segregation of communities and promote a more tolerant and inclusive society. Fundamentally, it means putting an end to institutionalized discrimination against Muslim communities as an urgent priority and ensuring accountability for alleged systematic human rights violations. These are significant challenges, but also opportunities for positive change.

60. The Special Rapporteur's visit confirmed that, unfortunately, the situation in Rakhine State has not changed significantly. Discriminatory local orders, policies and practices continue to deny Muslim communities some of their most fundamental rights and must be removed.[27]

61. In northern Rakhine State, a curfew order imposed in 2012 continues to prohibit gatherings of five or more people in public areas, including mosques, further affecting daily life and basic religious observances. Of particular concern are continuing restrictions on freedom of movement, which go beyond any justification of ensuring security and stability. As previously highlighted, such restrictions severely affect all aspects of life, including access to basic services and livelihoods. They also hamper interaction between the communities and negatively impact long-term stability and reconciliation. Restoration of the freedom of movement therefore remains an important priority. Without progress on this key issue, it will be impossible to address many other human rights concerns in Rakhine State.[28]

62. The Government is trying to resolve the legal status of Muslim communities throughout Rakhine State, including their access to citizenship. A citizenship verification exercise recently undertaken in several areas will be rolled out throughout the State. Identity cards for national verification are being issued — without designation of race or ethnicity, and without expiration dates. The Special Rapporteur acknowledges the Government's attempt to improve upon a verification exercise piloted in Myebon in 2014. Yet, there continues to be scepticism and even resistance to this latest initiative, particularly given the revocation of the temporary registration cards (white cards) last year. Many people with whom the Special Rapporteur spoke, including representatives of the Kaman community, expressed frustration that citizens, or those entitled to citizenship, were required to undergo this process. Additionally, many people claimed that they were not given prior information and received no further explanation afterwards. It was also clear that the verification exercise had been developed without consultation, and, in particular, without consultation with the communities concerned.

63. As the verification exercise continues, it will be important to consult fully with and involve those directly affected, including the establishment of clear time frames for each stage of the process. The Government must demonstrate that people granted citizenship may acquire the rights to which they are entitled. Accordingly, it must address the situation in Myebon, where those already granted citizenship remain in camps and continue to face restrictions on their freedom of movement and access to basic services.

[27] See A/HRC/32/18, para. 43.
[28] A/HRC/31/71, para. 39.

64. The Special Rapporteur is aware of the highly sensitive and politicized nature of these issues. Ultranationalist groups and religious movements have spread misinformation and further fuelled tensions between communities. As one example, fears about population increases in Aung Mingalar, a Muslim enclave in Sittwe, resulted in a headcount, conducted in May 2016. The count ultimately showed no appreciable change in population numbers. In addition, during the Special Rapporteur's visit, public perceptions of her views on the situation in Rakhine State, including issues related to terminology, resulted in the cancellation of a meeting by a political party, as well as the posting of death threats on social media. More can, and must, be done through proactive engagement and dialogue to counter such misinformation, which only serves to increase hostility and polarize communities.

65. Issues related to the use of certain words or terms remain sensitive. Five individuals were convicted and fined one million kyats under section 8 of the Printing and Publishing Enterprise Law 2014 (harming rule of law and public tranquillity) for publishing a calendar containing the word "Rohingya". Four individuals were subsequently convicted and sentenced to one year's imprisonment in June 2016, under section 505 (b) of the Penal Code, for the same offence. The Special Rapporteur is also aware that even attempts to find alternative terminology for both communities have resulted in protests and demonstrations (organized by the Organization for the Protection of Race and Religion (MaBaTha)). While she notes efforts to avoid the use of sensitive terms or to design a new identification card for citizenship verification that does not specify the person's ethnicity, such decisions cannot be unilaterally taken or imposed. Any further action on these complex issues must be consultative and efforts must be made to bring communities together. Ultimately, issues of terminology must not divert attention from the priority issues at stake in Rakhine State. The concerns and needs are real and urgent for all the communities concerned.

C. Combating and preventing religious intolerance and incitement to hatred

66. It is clear that divisions and tensions along religious lines remain pervasive. The Special Rapporteur has previously highlighted, for example, restrictions faced by religious minorities, notably by Christian groups.[29] Contrary to rumours and fears, census data on religion released on 21 July 2016 indicated only small increases in the Christian population (from 4.9 per cent to 6.2 per cent) and Muslim population (from 3.9 per cent to 4.3 per cent) compared with the last census in 1983.

67. Incidents of hate speech, incitement to hatred and violence and religious intolerance (particularly against Muslim communities) continue to give cause for concern. During her visit, the Special Rapporteur addressed recent reported attempts to evict Muslim vendors around Shwedagon Pagoda and to build pagodas or stupas on the property of, or close to, other religious buildings, including churches and mosques, in Kayin State in April 2016. She also expressed concern at the recent destruction of a mosque, school and Muslim cemetery in Bago region in June 2016. Additionally, she notes another worrying case of a recent burning of a mosque in Kachin State.

[29] See A/69/398, para. 40.

68. The Government should take prompt action to address these incidents, inter alia, by conducting thorough investigations and holding perpetrators to account. Reports that the authorities will not pursue action for fear of fuelling greater tensions are precisely the wrong signal to send. The Government must demonstrate that instigating and committing violence against an ethnic or religious minority community has no place in Myanmar. Perpetrators should be treated in accordance with the law, regardless of race, religion or ethnicity.

69. As previously recommended, comprehensive measures to address the root causes of such tensions and violence must also be implemented.[30] Serious and extreme instances of incitement to hatred which cross a clearly defined threshold combining a number of elements should be criminalized.[31] In other instances, civil laws providing for diverse procedural and substantive remedies should be adopted. Any measures taken should not, however, unduly restrict the rights to freedom of expression, assembly and association. Prevention should be prioritized, through education, information and media campaigns and other means, in order to deconstruct discriminatory stereotypes and promote greater religious tolerance.

70. The Special Rapporteur notes the establishment in July 2016 of the Emergency Management Central Committee, tasked with preventing and mitigating interreligious violence. The Committee will work directly with the authorities at all levels and with civil society. She also notes discussions regarding the development of laws on religious harmony and hate speech, and encourages broad and transparent consultations with interfaith, religious and civil society organizations and others, as well as with experts on international human rights standards.

71. The Special Rapporteur also commends Aung San Suu Kyi's commitment to condemning hate speech and incitement to hatred and violence against minorities. Additionally, she commends statements by the Minister for Religious Affairs and Culture against hate speech,[32] as well as the Commander-in-Chief's recent statement against religious extremism.[33] Other public officials and political leaders must also speak out.

72. The Special Rapporteur is closely following developments regarding MaBaTha, having herself been the subject of derogatory and offensive statements by one of its leaders. In July 2016, the Minister for Religious Affairs and Culture cautioned against the continuing use of hate speech and noted that action would be taken accordingly. The State religious authority, the State Sangha Maha Nayaka Committee, has also challenged the status of MaBaTha, reportedly stating that it is not an organization formed in accordance with its rules and directives.

73. The Special Rapporteur is also encouraged by the efforts of religious leaders and civil society actors to counter incitement to hatred. She notes, for example, the online petition organized by civil society protesting the eviction of Muslim vendors around Shwedagon Pagoda in April 2016. She also notes the efforts of organizations such as the Center for Diversity and National Harmony to promote greater interfaith dialogue and foster trust between communities. Such efforts must be bolstered by

[30] A/HRC/31/71, para. 32.
[31] A/70/412, para. 32.
[32] *Agence France Presse*, "Myanmar minister warns nationalists to end hate speech", 15 July 2016.
[33] Ye Mon, "Military chief condemns religious extremism", *Myanmar Times*, 14 July 2016 (http://www.mmtimes.com/index.php/national-news/21369-military-chief-condemns-religious-extremism.html).

the Government and the new Central Committee. Government initiatives to promote interfaith and intercommunal harmony must be conducted in cooperation with civil society and with religious and community leaders.

IV. Realizing economic, social and cultural rights for the prosperity of all

74. As Myanmar continues its reform process, the protection and fulfilment of economic, social and cultural rights must remain priorities, alongside investment in the skills and education of the population, in order to reap benefits in the future.

75. Birth registration, vital for access to many essential services, remains low across Myanmar. The Special Rapporteur was informed that in some conflict-affected areas no birth registration has taken place for several years because of difficulties accessing registration centres. Birth registration also remains alarmingly low in Muslim communities in Rakhine State, and the process for registering children on household lists has become more onerous. She welcomes the Government's commitment to registering an additional one million children in seven States and territories, including Rakhine State, next year and the removal of birth registration as a requirement for school enrolment. Myanmar should build on these commendable steps with international partners to achieve universal birth registration as soon as possible, and urgently register the estimated 5,000 blacklisted children in northern Rakhine State.

76. Child labour remains prevalent, with approximately one in 10 children aged between 5 and 17 years at work, almost half of them in hazardous occupations.[34] The majority come from rural areas and work in the agriculture, forestry and fishing sectors, as well as in manufacturing, trades and other services. The Special Rapporteur welcomes the Government's efforts, including the mainstreaming of child labour issues in its 100-day plans and the development of a hazardous work list in the country. She also welcomes efforts to develop a national plan of action with the International Labour Organization (ILO) and hopes that it can be finalized quickly. She notes that education is currently only compulsory up to the age of 10 years, resulting in a gap between the age at which compulsory education finishes and the minimum age of employment begins.[35] This gap increases the risk of child labour and exploitation. As discussed with the Government, the Special Rapporteur proposes that the age of compulsory education should be increased incrementally. She also encourages the Government of Myanmar to ratify the ILO Minimum Age Convention, 1973 (No. 138).

77. Education is a particular challenge in displaced communities and was a central concern raised by displaced persons when speaking with the Special Rapporteur. In Kachin State, many spoke of the lack of secondary and tertiary education and the low quality of primary education. In Rakhine State, members of the Rakhine community around Sittwe highlighted the long distances that had to be travelled to reach a secondary school. In camps for Muslim communities around Sittwe, there is only one secondary school, leaving many without access to formal education. The

[34] 2015 Myanmar National Labour Force Survey.

[35] The current minimum age of employment is 13 years, but in the amended draft of the Child Law it is increased to 14 years.

Special Rapporteur notes that small numbers of Muslim students are now able to attend Sittwe University, but underlines the need to dramatically expand access to education at all levels, irrespective of religion or ethnicity.

78. There is also a need to improve access to health care, particularly in rural and conflict-affected areas. This is especially true in Rakhine State, where Muslim communities in several townships can seek emergency medical treatment only at Sittwe hospital. This requires an onerous referral process, several hours' travel in many cases and, often, a police escort. Delays in accessing emergency treatment have resulted in preventable deaths, and more deaths are likely to occur if this policy is not changed.

79. Safe and timely access to health care is a basic right which should be available to all without discrimination. At a minimum, all people (including Rohingya and people of unresolved citizenship status) should have safe access to township hospitals and other facilities in emergency situations. The Special Rapporteur received assurances during her visit that this will be considered.

80. Sufficient funding should be made available to the education, health and social welfare sectors. The Special Rapporteur therefore welcomes indications that the recently-formed Financial Commission intends to amend the 2016-2017 Union Budget to allocate more funds to these important sectors. She believes that investment in these areas is a direct investment in the future prosperity of Myanmar.

81. As Myanmar continues to become more open, the impact of development projects on economic, social and cultural rights will become increasingly prominent. Development is needed for increased prosperity, but it cannot take place at the cost of human rights. The Special Rapporteur therefore reiterates the need for a rights-based and people-centred form of sustainable development, with projects carefully planned and scrutinized to maximize the benefits for all.

82. With an increase in projects proposed by local and international companies, the Special Rapporteur underlines the need to respect the rights of affected communities. During her visit, she met an individual affected by a large project who was informed that she will lose her home, but was given no further information. Communities must be consulted in a meaningful process throughout all project phases. Evictions, in both rural and urban areas, should be in line with the Basic Principles and Guidelines on Development-Based Evictions and Displacement.[36] The Government should consider a moratorium on all larger-scale projects, during which time extensive and meaningful consultations should be conducted with all stakeholders and advice sought on reviewing these projects in the light of international standards.

83. The impact of the mining industry on communities (particularly jade mining) remains a matter for concern. In May 2016, at least 13 people were killed by a landslide of waste from a jade mining operation. In addition, individuals continue to be displaced as mines expand with insufficient consultation or compensation. Civil society representatives drew attention to an "environmental disaster zone", with companies operating with little regard for the rule of law. Drug addiction in these and other areas also remains rife.

[36] A/HRC/4/18, annex I.

84. The Special Rapporteur welcomes the recent decision to suspend the issuance and renewal of licences for jade extraction until the legal framework is reformed. She also welcomes the visit by members of the Ministry of Environmental Conservation and Forestry to mining areas and their call for the terracing of waste heaps to prevent further landslides. However, additional steps are needed to address continuing rights violations. All mining companies should complete thorough assessments, as required by the recently adopted Environmental Impact Assessment Procedures. Mining has been on hold during the recent rainy season, and consideration should be given to allowing companies to resume mining only after they have submitted such an assessment. Compliance with the resulting plans should be continuously monitored in future; a joint body of representatives of civil society and affected communities could perform this function. Consideration should be given to ensuring that all applicable legislation, regulations and directives are publicly available and reviewed to ensure they include environmental, social and human rights protections.

85. The Special Rapporteur has previously highlighted the importance of transparency so that local communities can hold vested interests to account and ensure respect of their rights.[37] She welcomes the publication in January 2016 of Myanmar's first report under the Extractive Industries Transparency Initiative (covering April 2013 to March 2014). As Myanmar is to produce a second report in early 2017, she hopes that the person to lead this process will be designated quickly, as required by the Initiative's standard.[38] She also reiterates that the next report should contain detailed information relating to the jade industry, including beneficial ownership and contract terms, which could help tackle corruption in the sector.[39]

86. Land continues to be central to the livelihoods of the majority of the population. The Special Rapporteur remains of the opinion that dealing with past and continuing land confiscations and creating a fair, transparent regulatory system in line with international standards are some of the most pressing challenges for the Government. She therefore welcomes the formation of the Central Review Committee on Confiscated Farmlands and Other Lands and corresponding bodies at local levels. The Committee has returned over 13,000 acres (5261 hectares) of land since its creation and pledged to resolve all pending cases within six months. The Special Rapporteur is concerned, however, by the multiplicity of bodies to which potential complainants could have recourse (including parliamentary complaints committees), which could give rise to confusion. While welcoming the information that all land-related complaints will be forwarded to the Central Committee, she believes that clear information should be communicated publicly at all stages of the process.

87. The legal framework governing land issues must also be amended as a priority to limit the likelihood of future unjust confiscations. The Special Rapporteur welcomes the steps taken to draft a new comprehensive land law, building on the National Land Use Policy adopted in 2016. She hopes that all relevant stakeholders will be consulted, including civil society and affected communities, throughout the

[37] A/HRC/31/71, para. 69.

[38] Extractive Industries Transparency Initiative, *The EITI Standard 2016* (Oslo, 2016), requirement 1.1 (b) (https://eiti.org).

[39] A/HRC/31/71, para. 69.

drafting process. The law should ensure the protection of customary land use and community-managed resources and be consistent with international standards. With increasing foreign investment in Myanmar, the Special Rapporteur emphasizes that private companies, both local and international, have a responsibility not to cause, contribute or be directly linked to human rights abuses. She encourages all businesses to abide by the United Nations Guiding Principles on Business and Human Rights and other relevant standards, which can benefit project efficiency and relationships with local communities. She also notes that several controversial projects are being implemented by international companies and calls on the respective Governments to fulfil their duties to protect human rights, as called for by the Human Rights Council in its resolution 31/24.

V. Engaging with the international human rights system

88. The Special Rapporteur recommends greater engagement by Myanmar with the international human rights system. She welcomes a workshop jointly organized by OHCHR and the Ministry of Foreign Affairs on the International Covenant on Economic, Social and Cultural Rights and hopes it will lead to quick ratification of the Covenant by Myanmar. She also hopes that Myanmar will ratify other core human rights treaties, in particular the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as well as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and its Optional Protocol.

89. In November 2015, Myanmar underwent its second universal periodic review process. The Special Rapporteur welcomes Myanmar's acceptance of 166 out of 281 recommendations. The Government should consider developing a national human rights plan of action to support the implementation of all recommendations, including those of other human rights mechanisms.

90. In July 2016, the Committee on the Elimination of Discrimination against Women examined the combined fourth and fifth periodic reports of Myanmar. The Special Rapporteur urges the full implementation of the Committee's concluding observations and recommendations,[40] — many of which address issues referenced in the present report.

91. The Special Rapporteur emphasizes that the prompt establishment of an OHCHR country office with a full mandate could give vital assistance to the Government in addressing the complex and wide-ranging human rights challenges currently facing Myanmar. She notes that discussions are under way and hopes that an agreement can be reached quickly.

VI. Conclusions

92. The Special Rapporteur welcomes the Government's commitment to furthering democratic transition, national reconciliation, sustainable development and peace, and the important steps already taken in this regard. However, Myanmar's young

[40] CEDAW/C/MMR/CO/4-5.

democracy can only progress if human rights are fully integrated into its institutional, legal and policy framework. Building a culture of respect for human rights must be a priority now and in the future.

93. After the euphoria following the elections, the reality of the wide-ranging challenges facing the new Government has not significantly dampened the sense of hope for change. It will therefore be the key test for this Government to capitalize on its overwhelming public support and current momentum to make progress in human rights priorities and further reforms.

94. Although the new Government has asked the international community to give it time to act, the Special Rapporteur intends to remain constructively engaged in advocating for greater progress on human rights. She will also continue to hold Myanmar accountable to its international human rights obligations.

95. The international community also has a responsibility in this regard. In the rush to forge or strengthen political or economic ties, international actors must continue to prioritize human rights, in business and investment relations and elsewhere. In particular, actors supporting development projects in Myanmar should proactively ensure respect for the rights of affected communities. More broadly, international actors should not undermine human rights priorities by, for instance, remaining silent when confronted with concerns or, at worst, becoming complicit in perpetuating abuses. The international community should remain fully engaged in human rights issues, through continued monitoring, advocacy and other means, and by providing necessary support to the Government and other stakeholders for further democratic reforms in line with international human rights standards.

96. It is vital that all actors work together to ensure that human rights are respected and protected across Myanmar.

VII. Recommendations

97. The Special Rapporteur recommends that concrete steps be taken prior to the issuance of her next report to the Human Rights Council in March 2017 to implement the recommendations below.

98. With a view to upholding the rule of law and enhancing democratic space, the Government of Myanmar is encouraged to:

(a) Undertake a comprehensive review of legislation and legal provisions that limit fundamental freedoms and contravene international human rights standards, including the four "protection of race and religion" laws, with clear target dates;

(b) Establish a legislative reform process with clear timelines and consultation processes to ensure transparency and adequate engagement by civil society and the public, and establish a vetting mechanism to ensure compliance with international standards;

(c) Release all remaining political prisoners and immediately cease the arrest and prosecution of those exercising fundamental rights;

(d) Provide adequate compensation and support for released political prisoners;

(e) Stop surveillance and monitoring of civil society, and investigate and redress systematically any threats, acts of intimidation or harassment against media and civil society actors.

99. In order to address immediate conflict-related concerns, the Government of Myanmar should:

(a) Ensure that the United Nations, its partners and civil society organisations have regular, independent and predictable access to all those in need of humanitarian assistance wherever they are located;

(b) Ensure prompt, independent and impartial investigations into allegations of violations in conflict areas and the prosecution and punishment of all perpetrators;

(c) Cease immediately the use of landmines and scale up the clearance of mines and unexploded ordnance and marking and fencing activities;

(d) Become party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction;

(e) Conduct a full verification count of all underage soldiers and ensure their release;

(f) Ensure greater participation of women in the peace process, particularly in leadership roles, with a minimum quota of 30 per cent and integration of a gender perspective into political dialogues;

(g) Ensure the full participation of affected communities and civil society in the peace process.

100. In order to combat discrimination against minorities, the Government of Myanmar should:

(a) Implement a comprehensive set of measures to combat and prevent acts of incitement to discrimination, hostility and violence against minorities, including an anti-discrimination law or policy, while upholding internationally recognized human rights standards;

(b) Lift the curfew order and restrictions on freedom of movement in Rakhine State;

(c) Remove all discriminatory local orders, instructions and other policies and practices.

101. With a view to protecting the economic, social and cultural rights of the population, the Government of Myanmar should:

(a) Ensure access to adequate health, education and other basic services for all, particularly in Rakhine State, without discrimination;

(b) Proactively ensure participatory, inclusive and meaningful consultations on development projects and the proper consideration of all comments received;

(c) Draft, following consultations with civil society and affected populations, an overarching land law which complies with international standards;

(d) Streamline the complaints procedure for land disputes and ensure that information on the process is widely disseminated to guarantee non-duplication of procedures and prevent gaps;

(e) Ratify the ILO Minimum Age Convention, 1973 (No. 138) and incrementally increase the age of compulsory education from 10 to at least 14 years.

102. In order to enhance international human rights engagement, the Government of Myanmar should:

(a) Expedite the establishment of an OHCHR country office in Myanmar with a full mandate;

(b) Ratify the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

103. In the longer term, the Government of Myanmar should implement the following recommendations under the following areas

Anchor human rights within further democratic reforms

(a) Continue judicial reforms and the capacity-building and training of the judiciary;

(b) Initiate a process of consultation with all stakeholders on the review and amendment of the Constitution to bring it into line with international standards;

Address the aftermath of conflict and further peacebuilding

(c) Develop a programme of comprehensive support for victims and survivors of sexual and gender-based violence in conflict situations, including access to justice, health and psychosocial care, and socioeconomic support;

(d) Develop a strategy and timeline for comprehensive mine mapping and removal. Institute systematic mine risk and education activities for communities in affected areas;

(e) End child recruitment into the armed forces through a strengthened age determination process in recruitment procedures, improved enforcement of existing accountability, and unhindered access to and independent monitoring and oversight of all armed forces;

Ensure greater respect for the rights of minorities

(f) Resolve the legal status of habitual residents of Myanmar and ensure that they have equal access to citizenship through a non-discriminatory process, and review the Citizenship Law 1982 and bring it into line with international standards;

(g) In Rakhine State, address long-standing challenges to social and economic development through a human-rights-based approach, while ensuring the participation of the communities affected, and fostering reconciliation and integration between communities;

(h) Undertake holistic prevention, education and awareness-raising measures, addressing the root causes of discrimination, and promote interfaith and intercommunal dialogue.

Realization of further economic, social and cultural rights

(i) Review legislation, regulations and agreements governing extractive industries and major development projects in line with the obligation to protect against human rights abuses, and ensure that third parties comply with their responsibility to respect human rights, inter alia, by guaranteeing environmental due diligence assessments, proper consultation with affected communities and transparency.

104. The Special Rapporteur calls upon all investors and businesses to abide by the United Nations Guiding Principles on Business and Human Rights and other relevant standards. Relevant home States of international companies operating in Myanmar should ensure that they fulfil their duty to protect human rights in line with the Guiding Principles.

105. Regarding international human rights engagement, the Government of Myanmar should:

(a) Continue to engage constructively with the international human rights system;

(b) Become party to the core international human rights instruments.

106. The international community should:

(a) Continue to prioritize human rights in all its engagement with Myanmar;

(b) Continue to provide necessary assistance and support to further the reforms in line with international human rights standards.